

Rules Amending Title 13
Hawaii Administrative Rules

1. Chapter 1 of Title 13, Hawaii Administrative Rules, entitled, "Rules of Practice and Procedure, is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 1 ADMINISTRATION

CHAPTER 1

RULES OF PRACTICE AND PROCEDURE

Subchapter 1 General Provisions

§13-1-1	Purpose
§13-1-2	Definitions
§13-1-3	Office
§13-1-4	Hours
§13-1-5	Sessions
§13-1-6	Quorum
§13-1-7	Authentication
§13-1-8	Director
§13-1-9	Public Records

Subchapter 2 Proceedings Before the Board

§13-1-10	Appearance and practice before the board
§13-1-11	Proceedings before the board
§13-1-12	Filing of documents
§13-1-13	Computation of time
§13-1-14	Continuances or extensions of time
§13-1-15	Amendment or refusal of documents
§13-1-16	Retention of documents by the board
§13-1-17	Board decision
§13-1-18	Counsel for the board
§13-1-19	Substitution of parties
§13-1-20	Consolidations

Subchapter 3 Rulemaking Procedures

§13-1-21	Initiating proceeding
§13-1-22	Notice
§13-1-23	Time and place
§13-1-24	Conduct of rulemaking proceedings
§13-1-25	Emergency rulemaking
§13-1-26	Petitions for adoption, amendment or repeal of rules

Subchapter 4 Declaratory Rulings

§13-1-27	Petitions for declaratory rulings
----------	-----------------------------------

Subchapter 5 Contested Case Proceedings

§13-1-28	Contested case hearings
§13-1-29	Request for hearing
§13-1-30	Fees
§13-1-31	Parties
§13-1-31.1	Notice of Hearing
§13-1-32	Conduct of hearing
§13-1-32.1	Conduct of Hearing with only one party
§13-1-32.2	Discovery
§13-1-32.3	Records on file with the board
§13-1-33	Procedure for witnesses
§13-1-34	Motions
§13-1-35	Evidence
§13-1-36	Prehearing conferences; exchange of exhibits; briefs
§13-1-37	Correction of transcript
§13-1-38	Repealed
§13-1-39	Ex parte (single party) communications
§13-1-40	Decisions and orders
§13-1-41	Reconsideration
§13-1-42	Repealed

Historical Note: Chapter 1 of Title 13, Administrative Rules, is based substantially upon the Rules of Practice and Procedure before the Board of Land and Natural Resources. [Eff 7/26/62; R 6/22/81]

SUBCHAPTER 1

GENERAL PROVISIONS

§13-1-1 Purpose. This chapter governs practice and procedure before the board of land and natural resources of the State under Chapter 91, Hawaii Revised Statutes, the land laws of the State and such other related acts as may now or hereinafter be administered by the board. These rules shall be construed to secure the just, speedy, and inexpensive determination of every proceeding. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §91-2)

§13-1-2 Definitions. (a) As used in this title, unless the context requires otherwise:

"Applicant" shall mean and include the applicant or petitioner who initiated the request to the board for a permit or other authorization, or for other relief which is the subject of the contested case proceeding.

"Application" shall mean and include the application or petition made to the board for a permit or other authority, or for other relief.

"Board" means the board of land and natural resources.

"Chairperson" means the chairperson of the board of land and natural resources.

"Contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for an agency hearing.

"Department" means the department of land and natural resources.

"Party" means each person or agency named or admitted as a party, or property seeking and entitled as of right to be admitted as a party in any court or agency proceeding.

"Person" means as appropriate individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies.

"Petitioner" means the person or agency on whose behalf the petition or application is made.

"Presiding Officer" means the person conducting the hearing which shall be the chairperson or the chairperson's designated representative.

"Proceeding" means the board's consideration of the relevant facts and applicable law, consideration thereof, and action thereupon with respect to a particular subject within the board's jurisdiction, initiated by a filing or submittal or request or a board's notice or order, and shall include but not be limited to:

- (1) Proceeding involving the adoption of forest reserve or watershed boundaries;
- (2) Petitions for the creation of land use subzones in conservation districts;
- (3) Proceedings involving the adoption of forest, forest reserve, watershed, fish and game, water, parks, historical sites, recording and land development, use, management, disposal and acquisition rules;
- (4) Petitions or applications for the granting or declaring any right, privilege, authority, or relief under or from any provision of law or any rule or requirement made pursuant to a power granted by law;
- (5) An investigation or review instituted or requested to be instituted by the board;
- (6) Other proceedings involving the adoption, amendment, or repeal of any rule of the board whether initiated by board order or notice or by petition of an interested person.

"Public hearing" means a hearing required by law in which members of the public generally may comment upon a proposed rule or application.

"Rules" means the rules of practice and procedure before the board.

"Public records" is defined in section 92-50, Hawaii Revised Statutes. The term shall include all rules, written statements of policy or interpretation formulated, adopted or used by the board, all final opinions and orders, the minutes of meetings of the board and any other material required by law to be kept on file in the office of the board unless accorded confidential treatment pursuant to statute or the rules of the board.

(b) Unless otherwise specifically stated, the terms used in the rules adopted by the board pursuant to powers granted by statute shall have the meaning defined by such statute.

(c) A rule which defines a term without express reference defines the terms for all purposes as used both in the statute and in these rules, unless the context otherwise specifically requires. [Eff 6/22/81; am 9/7/82;

am and comp] (Auth: HRS §§91-2, 171-6) (Imp: HRS §§91-2, 91-8, 171-6)

§13-1-3 Office. The principal office of the board is at the Kalanimoku building, Honolulu, Hawaii. All communications to the board shall be addressed to the board of land and natural resources, 1151 Punchbowl Street, Honolulu, Hawaii, unless otherwise specifically directed. [Eff 6/22/81; comp] (Auth: HRS §91-2) (Imp: HRS §91-2)

§13-1-4 Hours. The office of the board shall be open from 7:45 a.m. to 4:30 p.m. of each day of the week except Saturday and Sundays and holidays unless otherwise provided by statute or executive order. [Eff 6/22/81; comp] (Auth: HRS §91-2) (Imp: HRS §§80-1, 91-2)

§13-1-5 Sessions. (a) The board meets and exercises its powers in any part of the State of Hawaii.

(b) Regular meetings of the board shall be held in Honolulu, on the second and fourth Fridays of each and every month; provided, however, that the board may establish another place or date for any regular meeting but shall give prior notice of the proposed changes in a newspaper of general circulation at least one week prior to the affected regular meeting.

(c) Special meetings may be convened by the chairperson of the board at any time by giving notice to each member present in the State at least five days prior to the date of the meeting; provided however that the notice shall not be required if all members present in the State agree and sign a written waiver of the notice. No final action involving disposition of public lands may be had at the special meeting.

(d) All meetings of the board shall be open to the public; provided, that the board may meet in executive session, from which the public may be excluded, by a recorded vote of two-thirds of the members present. No order, ruling, contract, appointment, or decision shall be finally acted upon at the executive session. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §§171-5, 92-3, 92-4)

§13-1-6 Quorum. Four members of the board shall constitute a quorum to transact business and the concurrence of a simple majority of the members of the board shall be necessary to make any action of the board valid. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §171-5)

§13-1-7 Authentication. All orders and other actions of the board shall be authenticated or signed by the chairperson or other persons authorized by the board. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §171-7)

§13-1-8 Chairperson. (a) The chairperson shall, in addition to any other duties, have charge of the board's official records and shall be responsible for the maintenance and custody of the files and records of the board, including the transcripts of testimony and exhibits, with all papers and requests filed in proceedings, the minutes of all action taken by the board and all its findings, determinations, reports, opinions, orders, rules, and approved forms.

(b) The chairperson shall also prepare for submission by the board an annual report of the department's activities, accomplishments, and recommendations to the governor and to the legislature through the governor. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §§171-6, 171-7)

§13-1-9 Public records. (a) All public records shall be available for inspection in the office of the board, Honolulu, Hawaii, during established office hours unless public inspection of these records is in violation of any state or federal law; provided that except where the records are open under any rule of court, the attorney general may determine which records may be withheld from public inspection when the records pertain to the preparation of the prosecution or defense of any action or proceeding to which the State is or may be a party, or when the records do not relate to a matter in violation of law and are deemed necessary for the protection of the character or reputation of any person.

(b) Public records printed or reproduced by the board in quantity shall be given to any person requesting the

same by paying the fees established by the board or by law. Photocopies of public records shall be made and given by the director to any person upon request and upon payment of the fees established by the board or by law. Certified copies of extracts from public records shall also be given by the director upon payment of the fees established by the board or by law.

(c) Requests for public information, for permission to inspect official records, or for copies of public records shall be handled with due regard for the dispatch of other public duties. [Eff 6/22/81; comp]
(Auth: HRS §171-6) (Imp: HRS §§91-2, 92-21, 92-51)

SUBCHAPTER 2

PROCEEDINGS BEFORE THE BOARD

§13-1-10 Appearance and practice before the board.

(a) A person may appear in the person's own behalf, a partner may represent the partnership, a bona fide officer or employee of a corporation or trust or association may represent the corporation, trust or association, and an officer or employee of an agency may represent the agency in any proceeding before the board.

(b) A person may be represented by or with counsel or other duly qualified representatives in any proceeding under these rules.

(c) A person shall not be represented in any proceeding before the board or a hearing officer except as stated in subsections (a) and (b).

(d) When a person acting in a representative capacity appears in person or signs any document or other papers in practice before the board, the person shall show the authority to act in that capacity.

(e) No person who has been associated with the board as a member, officer, employee, or counsel shall be permitted at any time to appear before the board in behalf of or to represent in any manner, any party in connection with any proceeding or matter which the person has handled or passed upon while associated in any capacity with the board.

(f) No person who has been associated with the board as a member, officer, employee, or counsel thereof shall be permitted to appear before the board in behalf of, or to represent in any manner, any person in connection with any proceeding or matter which was pending before the board at

the time of the person's association with the board unless the person shall first have obtained the written consent of the board upon a verified showing that the person did not give personal consideration to the matter or proceeding which the consent is sought or gain particular knowledge of the facts thereof during the person's association with the board. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §91-2)

§13-1-11 Proceedings before the board. (a) The board may on its own motion or on petition or application of any interested person or persons or an agency of the state or county government hold proceedings as necessary from time to time for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties, or the formulation of its rules.

(b) For the purposes permitted by law, the board may subpoena witnesses and require the production of evidence.

(c) The board shall follow procedures that, in its opinion, best serve the purposes of the proceedings, unless specifically prescribed in these rules or chapter 91, Hawaii Revised Statutes.

(d) Any rule in this chapter may be suspended or waived by the board or the presiding officer to prevent undue hardship in any particular instance.

(e) Proceedings shall be commenced by order of the board upon its own motion, or by the filing of a petition or application the processing of which necessitates a statutory hearing. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §§91-2, 92-16)

§13-1-12 Filing of documents. (a) All pleadings, applications, submittals, petitions, reports, maps, exceptions, briefs, memoranda, and other papers required to be filed with the board in any proceeding shall be filed with the chairperson. These papers may be sent by mail or hand-carried to the board office in Honolulu, Hawaii, within the time limit, if any, for filing. The date on which the papers are actually received by the office of the chairperson shall be deemed to be the date of filing.

(b) All papers shall be written, typewritten, or printed and signed in ink by the party signing the same or the party's duly authorized agent or attorney. The signature shall be legible. The signature of the person

signing the document constitutes a certification that the person has read the document, that to the best of that person's knowledge, information, and belief every statement contained in the document is true and no statements are misleading; and that it is not interposed for delay.

(c) Unless otherwise specifically provided by a particular rule or order of the board, an original and three copies of all papers shall be filed. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §91-2)

§13-1-13 Computation of time. Computation of time shall be as established by section 1-29, HRS. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §§1-29, 91-2)

§13-1-14 Continuances or extensions of time. Whenever a person or agency has a right or is required to take action within the period prescribed or allowed by these rules, by notice given thereunder or by an order, the board or its chairperson may, for good cause and if permitted by law:

- (1) Before the expiration of the prescribed period, with or without notice, extend the period; or
- (2) Upon application, permit the act to be done after the expiration of a specified period. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §91-2)

§13-1-15 Amendment or refusal of documents. If any document filed with the board is not in substantial conformity with rules of the board as to the contents thereof, or which is otherwise insufficient, the board may refuse to accept the document, or may require its amendment. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §91-2)

§13-1-16 Retention of documents by the board. All documents filed with or presented to the board may be retained in the files of the board. The board may permit the withdrawal of original documents upon submission of properly authenticated copies to replace the documents. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §§91-2, 171-7)

§13-1-17 Board decision. All final orders, opinions or rulings entered by the board in a proceeding and rules and written policies promulgated by the board shall be served upon the parties or persons participating in the proceeding by regular mail or personal delivery by the board and may be released for general publication. Copies of the published materials shall be available for public inspection in the offices of the board or may be obtained upon request and upon payment of charges, if any. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §91-2)

§13-1-18 Counsel for the board. The attorney general, as counsel for the board, shall be a party to all proceedings governed by these rules. The attorney general or representative of the attorney general shall be designated as "Counsel for the Board," and shall be served with copies of all papers, pleadings, maps and documents and other papers as are all other parties to the same proceeding. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §§28-4, 91-2)

§13-1-19 Substitution of parties. Upon motion and for good cause shown, the board may order substitution of parties; provided that in case of death of a party, substitution may be ordered without the filing of a motion. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §91-2)

§13-1-20 Consolidations. The board, upon its own initiation or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties or issues which are the same or closely related, if it finds that the consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §91-2)

SUBCHAPTER 3

RULEMAKING PROCEEDINGS

§13-1-21 Initiating proceedings. Pursuant to petition, or upon its own motion, when the board proposes to issue, amend, or repeal a rule, a public hearing shall be held as provided by law. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §§91-3, 91-6)

§13-1-22 Notice. (a) Notice of proposed rulemaking shall be published at least once in a newspaper of general circulation in the State and in each County affected by the proposed rule. All notices shall be issued at least twenty days prior to the date set for public hearing. (b) A notice of the proposed issuance, amendment, or repeal of a rule shall include:

- (1) A statement of the date, time, and place where the public hearing shall be held;
- (2) Reference to the authority under which the issuance, amendment, or repeal of a rule is proposed;
- (3) A statement of the substance of the proposed rulemaking; and
- (4) In the case of a proposal to establish, change, or review forest reserve or watershed boundaries, in addition to the foregoing, a statement of the time and place where maps showing the proposed or existing boundaries within the county may be inspected prior to the public hearing.

(c) In any rulemaking proceeding where the board deems it warranted, a further notice of proposed rulemaking may be issued by publication thereof in a newspaper of general circulation in the State. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §§91-3, 91-6)

§13-1-23 Time and place. Each hearing shall be held at the time and place set in the notice of hearing, but may at that time and place be continued by the presiding officer from day to day or adjourn to a later date or to a different place without notice other than the announcement thereof at the hearing. Where the proposed rulemaking affects only one county, the public hearing shall be held in that county. [Eff 6/22/81; comp] (Auth: HRS §171-6) (Imp: HRS §§91-3, 92-16)

§13-1-24 Conduct of rulemaking hearings. (a) Each hearing shall be presided over by the chairperson of the board or its designated representative. The hearing shall be conducted in such a way as to afford to interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the hearing.

(b) At the commencement of the hearing, the presiding officer shall read the pertinent portions of the notice of the hearing and shall then outline briefly the procedure to be followed. Evidence shall then be received with respect to the matters specified in the notice of hearing in the order the presiding officer shall prescribe.

(c) All interested persons shall be given reasonable opportunity to offer evidence with respect to the matters specified in the notice of hearing. Every witness may, before proceeding to testify, be sworn, and may be required thereafter to state the witness' name, address, and whom the witness represents at the hearing, and give any other information respecting the witness' appearance as the presiding officer may request. The presiding officer shall confine the evidence to the questions before the hearing but shall not apply the technical rules of evidence. Every witness shall be subject to questioning by the presiding officer or by any other representative of the board, but cross-examination by private persons shall not be permitted except if the presiding officer expressly permits it.

(d) All interested persons or agencies of the State or its political subdivisions shall be afforded an opportunity to submit data, views or arguments which are relevant to the issues. In addition, or in lieu thereof, persons or agencies may also file with the board within fifteen days following the close of public hearing a written protest or other comments or recommendations in support of or in opposition to the proposed rulemaking. Persons designated by the presiding officer shall be furnished with copies of any written protest or other comments or recommendations, and they shall be afforded a reasonable time within which to file their comments in reply to the original protest, comments, or recommendations. Written protest, comments or recommendations or replies thereto shall not be accepted unless an original and ten copies (or lesser number of

copies as may be specifically agreed to by the presiding officer) are filed. The period for filing written protest, comments, or recommendations may be extended by the presiding officer for good cause.

(f) Unless otherwise specifically ordered by the board or the presiding officer, testimony given at the hearing need not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made part of the record. Unless the presiding officer finds that the furnishing of the required number of copies of the exhibits shall be submitted.

(g) At the close of the final public hearing, the board shall announce the date when its decision shall be announced, or the board may, if it so desires, make the decision at the public hearing. The board shall consider all relevant comments and material of record before taking final action in a rulemaking proceeding. [Eff 6/22/81; comp

] (Auth: HRS §171-6) (Imp: HRS §§91-3, 92-16)

§13-1-25 Emergency Rulemaking. Notwithstanding the foregoing rules, if the board finds that an imminent peril to public health, safety, or morals requires adoption, amendment, or repeal of a rule upon less than twenty days' notice of hearing, and states in writing its reason for the finding, it may proceed without prior notice or hearing or upon an abbreviated notice and hearing to adopt an emergency rule to be effective for a period not longer than 120 days without renewal. [Eff 6/22/81; comp]
(Auth: HRS §171-6) (Imp: HRS §91-3)

§13-1-26 Petitions for adoption, amendment or repeal of rules. (a) Any interested person or any agency of the state or county government may petition the board for the issuance, amendment, modification, or repeal of any rule which is designed to implement, interpret, or prescribe law, policy, organization, procedure, or practice requirements of the board.

(b) Petitions for rulemaking shall set forth the text of any proposed rule or amendment desired or specifying the rule the repeal of which is desired and stating concisely the nature of the petitioner's interest in the subject matter and the reasons for seeking the issuance, amendment,

or repeal of the rule and shall include any facts, views, arguments, and data deemed relevant by petitioner. The board may require the petitioner to adequately and properly notify persons or governmental agencies known to be interested in the proposed rulemaking of the existence of the filed petitions. No request for the issuance, amendment, modification, or repeal of a rule which does not conform to the requirements set forth above shall be considered by the board.

(c) Petitions for rulemaking shall become matters of public record upon filing. The board shall within thirty days following the filing of the petition either deny the petition in writing or initiate public rulemaking procedures. No public hearing, oral argument, or other form of proceedings need be held, but if the board determines that the petition discloses sufficient reasons in support of the relief requested to justify the institution of public rulemaking proceedings, the procedures to be followed shall be as set forth in §13-1-21 and §13-1-22. Where the board determines that the petition does not disclose sufficient reasons to justify the institution of public rulemaking procedures, or where the petition for rulemaking fails in any material respect to comply with the requirements of these rules, the petitioner shall be so notified together with the grounds for the denial. The provisions of this section shall not operate to prevent the board, on its own motion, from acting on any matter disclosed in any petition. [Eff 6/22/81; comp

] (Auth: HRS §171-6) (Imp: HRS §§91-6, 92-16)

SUBCHAPTER 4

DECLARATORY RULINGS

§13-1-27 Petition for declaratory rulings. (a) On petition of an interested person, the board may issue a declaratory order regarding the applicability of any statutory provision or of any rule or order of the board. Petitions for the issuance thereof shall state clearly and concisely the controversy or uncertainty, shall cite the statutory authority involved, shall include a complete statement of the facts and the reasons or grounds prompting the petition, together with full disclosure of petitioner's interest and shall conform to the requirements of §13-1-12.

(b) The board, upon receipt of the petition, may require the petitioner to file additional data or a

memorandum of legal authorities in support of the position taken by the petitioner.

(c) The board may, without notice or hearing, dismiss a petition for declaratory ruling which fails in any material respect to comply with the requirements of this section.

(d) After review of the information filed pursuant to this section the board may order a hearing on the petition. Any petitioner or interested party who requests a hearing on the petition shall set forth in writing the reasons why the information filed will not permit a fair and expeditious disposition of the petition. If the request for hearing is dependent upon factual assertion, affidavits establishing those facts shall accompany the request. In the event a hearing is ordered by the board, §§91-9 through 91-13, Hawaii Revised Statutes, shall govern the proceeding.

(e) Notwithstanding the other provisions of this section, the board may, on its own motion or upon request but without notice or hearing, issue a declaratory order to terminate a controversy or to remove uncertainty. [Eff 6/22/1981; am 9/7/82; comp] (Auth: HRS §171-6) (Imp: HRS §§91-8, 92-16)

SUBCHAPTER 5

CONTESTED CASE PROCEEDINGS

§13-1-28 Contested case hearings. (a) When required by law, the board shall hold a contested case hearing upon its own motion or on the written petition of any government agency or any interested person who is [properly] admitted as a party pursuant to section 13-1-31. [~~Unless specifically prescribed in this chapter or by chapter 91, Hawaii Revised Statutes, the board may adopt procedures that in its opinion will best serve the purposes of the hearings.~~]

(b) Where a public hearing is required by law, it shall be held prior to the contested case hearing.

(c) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. [Eff 9/7/82; am and comp] (Auth: HRS §§91-2, 91-9(d), 171-6) (Imp: HRS §91-9)

§13-1-29 Request for hearing. (a) ~~[A hearing on a contested matter may be requested by the board on its own motion or upon the written petition of any government agency or any interested person who then properly qualifies to be admitted as a party.]~~ An oral or written request for a contested case hearing must be made by the close of the public hearing (if one is ~~[required]~~ held) or prior to the board rendering a decision on the matter at the meeting at which the matter is scheduled for disposition (if no public hearing is ~~[required]~~ held). If a request for a contested case hearing is made in writing and delivered by mail, the request shall be deemed timely if postmarked at least three days prior to the public hearing or board meeting, whichever is applicable. In either situation, except where the requestor is the applicant, the person or agency requesting the contested case hearing, and any other persons or agencies interested in being a party in the contested case hearing, must file (or mail and postmark) a formal written ~~[petition]~~ request with the board not later than ten days after the close of the public hearing or the board meeting, whichever is applicable. The time for making an oral or written request and submitting a formal written ~~[petition]~~ request may be waived by the board upon a showing of good cause.

(b) ~~[A petition requesting]~~ The formal written request for a contested case hearing shall contain concise statements of:

- (1) The nature and extent of the requestor's interest that may be affected by the application that entitles the requestor to participate in a contested case ~~[legal authority under which the proceeding, hearing or action is to be held or made];~~
- (2) The disagreement the requestor has with the application ~~[petitioner's interest that may be affected];~~
- (3) The relief the requestor seeks or to which the requestor deems itself entitled ~~[disagreement, denial, or grievance which is being contested by the petitioner];~~
- (4) How the requestor's participation would serve the public interest ~~[The basic facts and issues raised];~~ and
- (5) Any other information that may assist the board in determining whether the requestor meets the criteria to be a party pursuant to section 13-1-

~~31-[The relief to which the party or petitioner seeks or deems itself entitled].~~ [Eff 9/7/82; am and comp] (Auth: HRS §91-2) (Imp: HRS §91-9)

~~[§13-1-30 Notice of hearing. After a determination is made that a contested case hearing is required, the written notice of hearing shall be served on parties in accordance with section 91-9.5, Hawaii Revised Statutes, and shall be served on all persons or agencies admitted as a party at their last recorded addresses at least fifteen days before the hearing date. Further, the notice shall be published as provided by law but not less than once in a newspaper of general circulation within the State and within the county provided that matters of internal management shall not be subject to the publication requirement.]~~ [Eff 9/7/82; R] (Auth: HRS §§91-2, 171-6) (Imp: HRS §§91-9, 91-9.5)]

§13-1-30 Fees. When the application involves a conservation district use permit (including a request for a permit, modification of a permit, violation of a permit, or revocation of a permit), the request for a contested case hearing shall be accompanied with a \$100.00 nonrefundable filing fee and a \$500.00 contested case fee to partially cover the administrative costs of the contested case proceedings. The contested case fee shall be refunded in full if the requestor is not admitted as a party under §13-1-31. The chairperson may waive the filing fee or contested case fee for any person upon a showing of financial hardship. [Eff and comp] (Auth: HRS §§91-2, 183C-3(4)) (Imp: HRS §§91-2, 183C-3(4))

§13-1-31 Parties. (a) Within a reasonable time following the ten-day period following the public hearing or board meeting at which a contested case is requested, the presiding officer shall notify the applicant and all persons and agencies who timely requested a contested case hearing of the date and time for a hearing to determine whether any or all of the persons and agencies requesting a contested case hearing shall be parties to the contested case. Such notice shall also set the time for filing any objections to the admission of any requestor as a party to the contested case.

(b) The following persons or agencies shall be admitted as ~~[a party]~~ parties:

(1) The ~~[petitioner]~~ applicant shall be a party.

- (2) All government agencies whose jurisdiction includes the land in question ~~[may]~~ shall be admitted as parties upon timely application.
- (3) All persons who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application.

[(4)] (c) Other persons who can show a substantial interest in the matter may ~~[apply to be a party]~~ be admitted as parties. The ~~[presiding officer or the]~~ board may approve the ~~[application]~~ request only if the ~~[applicant's]~~ requestor's participation will substantially assist the board in its decision making.

~~[(b)]~~ The ~~[presiding officer or the]~~ board ~~[as provided by law]~~ may deny any ~~[application]~~ request to be a party when it appears that:

- (1) The position of the ~~[applicant for participation]~~ requestor is substantially the same as the position of a party already admitted to the proceedings; and
- (2) The admission of additional parties will not add substantially new relevant information or the addition will ~~render make~~ the proceedings inefficient and unmanageable.

~~[(e)]~~ d All persons with similar interests seeking to be admitted as parties shall be considered at the same time so far as possible.

~~[(d) Where a contested case hearing has been scheduled, any other interested person who qualifies to be a party under subsection (a) may apply to participate, in accordance with this subchapter, by filing a written application with the board not later than ten days before the scheduled contested case hearing or at an earlier date as established by the board. Except for good cause shown, late filings shall not be permitted.]~~

~~(c) The application to become a party shall contain the following:~~

- ~~(1) The nature of applicant's statutory or other right.~~
- ~~(2) The tax map key number of the applicant's property as well as the petitioner's property. The nature and extent of applicant's interest.~~

- ~~(3) The effect of any decision in the proceeding on applicant's interest.~~
- ~~(4) The difference in the effect of the proposed action on the applicant's interest and the effects of the proposed action on the general public.~~
- ~~(f) If relevant, the application shall also address:~~
 - ~~(1) Other means available whereby applicant's interest may be protected.~~
 - ~~(2) The extent the applicant's interest may be represented by existing parties.~~
 - ~~(3) The extent the applicant's interest in the proceedings differs from that of the other parties.~~
 - ~~(4) The extent the applicant's participation can assist in development of a complete record.~~
 - ~~(5) (1) The extent the applicant's intervention would serve the public interest.~~
 - ~~(6) How the applicant's intervention would serve the public interest.~~
 - ~~(7) Any other information the board may add or delete.~~

~~(g)e)~~ If any party opposes another person's [application] request to be a party, the party may file objections ~~[for the record no later than ten days prior to the hearing]~~ within the time set forth by the presiding officer.

(f) The hearing to determine parties to the contested case may be conducted by the board or the presiding officer, or by a hearing officer appointed by the board. At such hearing, evidence and argument shall be limited to matters necessary to determine whether the requestor shall be admitted as a party. Only a party objecting to a requestor's admission as a party shall have the opportunity to cross-examine a requestor or the requestor's witness; provided, however, that the board or presiding officer or hearing officer may cross-examine any witness at such hearing. The hearing to determine parties may be waived upon concurrence of the applicant and all requestors.

(g[h]) If the hearing to determine parties to the contested case was not conducted by the board, and the person who conducted such hearing recommends that any agency or person requesting to be a party should not be allowed to participate in the contested case, such recommendation and the reasons therefore shall be immediately submitted to the board in writing. The requestor whose request is recommended for denial shall have the opportunity to file objections to the recommendation. [All applications to be a party] Such

recommendation shall be acted upon by the board as soon as practicable and shall be decided, by written order, not later than the commencement of the contested case hearing.

(h[I]) A person whose [~~petition~~] request to be admitted as a party has been denied by the board may appeal that denial to the circuit court pursuant to section 91-14, Hawaii Revised Statutes. [Eff 9/7/82; am 11/1/85; am and comp] (Auth: HRS §§91-2, 171-6) (Imp: HRS §§91-9, 91-9.5)

§13-1-31.1 Notice of hearing. After a determination is made that a contested case hearing is required and the parties have been determined, a written notice of hearing shall be served on parties in accordance with section 91-9.5, Hawaii Revised Statutes, and shall be served on all persons or agencies admitted as a party at their last recorded addresses at least fifteen days before the hearing date. Further, the notice shall be published as provided by law but not less than once in a newspaper of general circulation within the State and within the county provided that matters of internal management shall not be subject to the publication requirement. [Eff and comp]
(Auth: HRS §§91-2, 171-6) (Imp: HRS §§91-9, 91-9.5)

§13-1-32 Conduct of hearing. (a) Contested case hearings shall be conducted in accordance with this subchapter, and chapter 91, HRS.

(b) The board may conduct the hearing or, the board in its discretion may delegate the conduct of the contested case hearing to a hearing officer, in which case the chairperson shall select such hearing officer. As used in this section and in sections 13-1-33, 13-1-34, 13-1-35, 13-1-36, and 13-1-39, unless the context clearly indicates otherwise, the term "presiding officer" shall mean the presiding officer as defined in section 13-1-2 when the hearing is conducted by the board, but shall mean the hearing officer when the conduct of the hearing has been delegated to a hearing officer.

~~[(b)]~~ (c) The presiding officer shall have the power to give notice of the hearing, administer oaths, compel attendance of witnesses and the production of documentary evidence, examine witnesses, certify to official acts, issue subpoenas, rule on offers of proof, receive relevant evidence, hold conferences before and during hearings, rule on objections or motions, fix times for submitting documents, briefs, and dispose of other matters that normally and properly arise in the course of a hearing

authorized by law that are necessary for the orderly and just conduct of a hearing. ~~[The]~~ If the hearing is conducted by the board, the board members may examine and cross-examine witnesses.

~~[(c)]~~ The chairperson of the board shall be the presiding officer. However, the chairperson may designate another board member, an appointed representative or a master to be presiding officer unless prohibited by law.

~~[(d)]~~ The board may conduct the hearing or, unless otherwise prohibited by law, the board in its discretion may designate a hearing officer or master to conduct contested case hearings.

~~[(e)]~~ (d) The presiding officer shall provide that a verbatim record of the evidence presented at any hearing is taken unless waived by all the parties. Any party may obtain a certified transcript of the proceedings upon payment of the fee established by law for a copy of the transcript.

~~[(f)]~~ (e) In hearings on applications, petitions, complaints, and violations, the applicant, petitioner, ~~[or]~~ complainant, or accuser shall make the first opening statement and the last closing argument unless the board directs otherwise. Other parties shall be heard in such order as the presiding officer directs. ~~[After all parties close their case, the department may make its recommendations, if any.]~~

~~[(g)]~~ (f) Where a party is represented by more than one counsel or representative, they may allocate witnesses between them but only one of the counsel or representatives shall be permitted to cross-examine a witness or ~~[to]~~ state any objections or ~~[to]~~ make closing arguments.

~~[(h)]~~ (g) Each party shall have the right to conduct such cross-examinations of the witnesses as may be required for a full and true disclosure of the relevant facts and shall have the right to submit rebuttal evidence, subject to limitation by the presiding officer.

~~[(i)]~~ (h) To avoid unnecessary or repetitive evidence, the presiding officer may limit the number of witnesses, the extent of direct or cross examination or the time for testimony upon a particular issue~~[, subject to law]~~. [Eff 9/7/82; am and comp] (Auth: HRS §§91-2, 171-6) (Imp: HRS §91-9)

13-1-32.1 Conduct of hearing with only one party. Where the applicant is the sole party in the contested case, the board or the hearing officer, as the case may be, shall consider and give appropriate weight to the records

on file with the board directly relating to the application, including, but not limited to, staff submittals to the board, if any; provided, however, that the staff shall not be made parties to the contested case nor be compelled to give testimony on any documents within the file unless the board or the hearing officer deems it necessary to a just disposition of the case. [Eff and comp _____] (Auth: HRS §§91-2, 171-6) (Imp: HRS §§91-2, 91-9, 171-6)

§13-1-32.2 Discovery. Depositions of witnesses and interrogatories shall not be allowed except upon agreement of the parties. The presiding officer shall have the discretion to require parties to file and serve upon all other parties written witness statements and exhibits and to establish a schedule for such filings. [Eff and comp _____] (Auth: HRS §§91-2, 171-6) (Imp: HRS §§91-2, 91-9, 171-6)

§13-1-32.3 Records on file with board. Records directly relating to the application that are on file with the board, including, but not limited to, the record of the public hearing (if held), shall be a part of the record of the contested case; provided, however, that any party may object, in the manner provided in section 13-1-35, to any part of such record. [Eff and comp _____] (Auth: HRS §§91-2, 171-6) (Imp: HRS §§91-2, 91-9, 171-6)

§13-1-33 Procedure for witnesses. (a) Witnesses may be subpoenaed as set forth below:

- (1) Requests for the issuance of subpoenas, requiring the attendance of a witness for the purpose of taking oral testimony before the board shall be in writing, and shall state the reasons why the testimony of the witness is believed to be material and relevant to the issues involved. Only parties or a board member may request the issuance of a subpoena.
- (2) Request for the issuance of subpoenas for the production of documents or records shall be in writing, shall specify the particular document or record, or part thereof, desired to be produced; and shall state the reasons why the production thereof is believed to be material and relevant

to the issues involved. Only parties or a board member may request the issuance of a subpoena duces tecum.

(b) Subpoenas may be issued by the presiding officer. No subpoena shall be issued unless the party requesting the subpoena has complied with this section giving the name and address of the desired witness and tendering the proper witness and mileage fees. Signed and sealed blank subpoenas shall not be issued to anyone. The name and address of the witness shall be inserted in the original subpoena, a copy of which shall be filed in the proceeding. Subpoenas shall state at whose request the subpoena is issued. Requests for subpoenas shall be filed not later than three days before the scheduled hearing.

(c) Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in circuit courts of the State of Hawaii and such fees and mileage shall be paid by the party at whose request the witness appears. [Eff 9/7/82; comp] (Auth: HRS §§91-2, 171-6) (Imp: HRS §92-16)

§13-1-34 Motions. (a) All motions other than those made during a hearing shall be made in writing [~~to the board~~], shall state the relief sought, and shall be accompanied by an affidavit or memorandum setting forth the grounds upon which they are based. The presiding officer shall set the time for all motions and opposing memorandum, if any.

(b) [~~The moving party shall serve a copy~~] Copies of all motions, affidavits, memoranda, counter affidavits, and memoranda in opposition shall be served on all other parties [~~at least forty-eight hours prior to the hearing on the motion and~~] within the time set by the presiding officer. The original shall be filed with the board [~~the original~~][with proof of service.

[~~(c) A memorandum in opposition or a counter affidavit shall be served on all parties at least forty-eight hours prior to the hearing on the motion and shall file with the board the original with proof of service.~~]

(d) Failure to serve or file a memorandum in opposition to a motion or failure to appear at the hearing on the motion, if held, shall be deemed a waiver of objection to the granting or denial of the motion. [Eff 9/7/82; am and comp] (Auth: HRS §§91-2, 171-6) (Imp: HRS §91-7)

§13-1-35 Evidence. (a) The presiding officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view to doing substantial justice.

(b) The presiding officer shall rule on the admissibility of all evidence. The rulings may be reviewed by the board in determining the matter on its merits.

(c) When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

(d) An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained, or the submission of the evidence itself.

(e) With the approval of the presiding officer, a witness may read testimony into the record on direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer and all counsel parties. Admissibility shall be subject to the rules governing oral testimony. If the presiding officer deems that substantial saving in time will result, a copy of the prepared testimony may be received in evidence without reading, provided that copies thereof shall have been served upon all parties and the presiding officer five days before the hearing or if such prior service is waived, to permit proper cross examination of the witnesses on matters contained in the prepared testimony.

(f) If relevant and material matter is offered in evidence in a document containing other matters, the party offering it shall designate specifically the matter so offered. If the other matter in the document would burden the record, at the discretion of the presiding officer, the relevant and material matter may be read into the record or copies of it received as an exhibit. Other parties shall be afforded opportunity at the time to examine the document, and to offer in evidence other portions believed material and relevant.

(g) Exhibits shall be prepared as follows:

- (1) Documents, pleadings, correspondence and other exhibits shall be legible and must be prepared on paper [~~either 8-1/2 x 13 inches or~~] 8-1/2 x 11 inches in size. Charts and other oversize exhibits must be bound or folded to the respective approximate size, where practical.

Wherever practicable, sheets of each exhibit shall be numbered and data and other figures shall be set forth in tabular form.

- (2) When exhibits are offered in evidence, the original and eight copies, unless otherwise waived by the board, shall be furnished to the presiding officer for the board's use with adequate copies for review by other parties, unless the copies have been previously furnished or the presiding officer directs otherwise.

(h) If any matter contained in a document on file as a public record with the department is offered in evidence, unless directed otherwise by the presiding officer, the document need not be produced as an exhibit, but may be received in evidence by reference, provided that the particular portions of the document are specifically identified and otherwise competent, relevant, and material. If testimony in proceedings other than the one being heard is offered in evidence, a copy shall be presented as an exhibit, unless otherwise ordered by the presiding officer.

(i) Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii. Official notice may also be taken of generally recognized technical or scientific facts when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

(j) At the hearing, the presiding officer may require the production of further evidence upon any issue. Upon agreement of the parties, the presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time. [Eff 9/7/82; am and comp
] (Auth: HRS §§91-2, 171-6) (Imp: HRS §§91-9, 91-10)

§13-1-36 Prehearing conferences; exchange of exhibits; briefs. (a) The presiding officer may hold or cause to be held pre-hearing conferences with the parties for the purpose of formulating or simplifying the issues, written testimony, setting of schedules, exchanging names of witnesses, limitation of number of witnesses, and such other matters as may expedite orderly conduct and disposition of the proceeding as permitted by law.

(b) The presiding officer may request briefs setting forth the issues, facts and legal arguments upon which the parties intend to rely and the presiding officer may fix

the conditions and time for the filing of briefs and the number of pages. Exhibits may be reproduced in an appendix to a brief. A brief of more than twenty pages shall contain a subject index and table of authorities. [Eff 9/7/82; comp] (Auth: HRS §§91-2, 171-6) (Imp: HRS §91-9)

§13-1-37 Correction of transcript. Motions to correct the transcript shall be made within five days after receipt of the transcript and shall be acted upon by the presiding officer. [Eff 9/7/82; comp] (Auth: HRS §§91-2, 171-6) (Imp: HRS §91-10)

~~[§13-1-38 Disqualification. No board member shall sit in any proceeding in which the member has any pecuniary or business interest involved in the proceeding or who is related within the first degree by blood or marriage to any party to the proceeding. If, after declaring any pecuniary interest or consanguinity to the parties, the parties do not oppose the member from sitting in a proceeding, the record shall note clearly the waiver by the parties.]~~ [Eff 9/7/82; R] (Auth: HRS §§91-2, 171-6) (Imp: HRS §§84-14, 91-13, 171-4)]

§13-1-38 Ex parte (single party) communications.
(a) No party or person [~~petitioning~~ requesting] to be a party [~~to a proceeding before the board~~] in a contested case, nor ~~their the party's or such person's~~ employees, representatives or agents shall make an unauthorized ex parte communication either oral or written concerning the contested case to the presiding officer or any member of the board who will be a participant in the decision-making process.

(b) The following [~~classes~~] types of ex parte communications are permitted:

- (1) Those which relate solely to matters which a board member is authorized by the board to dispose of on ex parte basis.
- (2) Requests for information with respect to the procedural status of a proceeding.
- (3) Those which all parties to the proceeding agree or which the board has formally ruled may be made on an ex parte basis.
- (4) [~~(4) Those with representatives of any news media on matters intended to inform the general~~]

~~public.~~] [Eff 9/7/82; am and comp
] (Auth: HRS §§91-2, 171-6) (Imp: HRS §91-
13)

§13-1-39 Decisions and orders. (a) [~~A proceeding shall be deemed submitted for decision by the board after the taking of evidence, the filing of briefs, the consideration of motions, and the presentation of oral argument as may have been permitted or prescribed by the presiding officer.~~] After all evidence has been taken, the parties may submit, within the time set by the presiding officer, a proposed decision and order, which shall include proposed findings of fact and conclusions of law. Where a hearing officer has conducted the hearing, the hearing officer shall [~~file~~] submit to the board a report with the evidence, or a summary thereof, as well as [~~proposed~~] recommended findings of facts and conclusions of law [~~which the board may adopt, reject or modify. A party to the proceedings may submit a proposed decision and order which shall include proposed findings of fact and conclusions of law. The proposals shall be filed with the board and mailed to each party to the proceeding not later than ten days after the transcript is prepared and available, unless the presiding officer shall otherwise prescribe.~~], and the parties shall have an opportunity, within the time set by the presiding officer, to file with the board objections or exceptions to the hearing officer's report and recommendation.

(b) Within the time established by law, if any, or within a reasonable time after the [~~hearing~~] parties have had an opportunity to file objections and exceptions, if applicable, to file briefs and to present oral argument as may have been permitted, the board shall render its findings of fact, conclusions of law, and decision and order approving the [~~proposal~~] application, denying the [~~proposal~~] application, or modifying the [~~proposal~~] application by imposing conditions. The vote of each member shall be recorded. Upon agreement by the parties, the provisions of section 91-11, HRS, concerning the examination of evidence and proposed decision [~~provisions under section under section 91-11, HRS~~], may be waived pursuant to section 91-9(d), HRS.

(c) Every decision and order adverse to a party to the proceeding, rendered by the board in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of

law. If any party to the proceeding has filed proposed findings of fact, the board shall incorporate in its decision a ruling upon ~~[each]~~ the proposed findings so presented.

(d) Decisions and orders shall be served by mailing certified copies thereof ~~[to the parties]~~ each party at the party's address of record. When service is not accomplished by mail, it may be effected by personal delivery of a certified copy. When a party to ~~[an application proceeding]~~ a contested case has appeared by a representative or by counsel, service upon the representative or counsel shall be deemed to be service upon the party. [Eff 9/7/82; am and comp] (Auth: HRS §§91-2, 171-6) (Imp: HRS §91-12)

§13-1-40 Reconsideration. (a) Upon the motion of a party, the ~~The~~ board may reconsider a decision it has made on the merits only if the ~~[moving]~~ party can show that:

(1) New information not previously available would affect the result; or

(2) ~~[That a]~~ A substantial injustice would occur.

(b) In either case, a motion for reconsideration shall be made not later than five business days after the decision or any deadline established by law for the disposition of the subject matter, whichever is earlier. [Eff 9/7/82; am and comp] (Auth: HRS §§91-2, 171-6) (Imp: HRS §§91-11, 91-12)

~~["§13-1-42 Appeals. Parties to proceedings who are aggrieved by the decision of the board may obtain judicial review thereof in the manner set forth in section 91-14, Hawaii Revised Statutes, provided that the court may also reverse or modify a finding of the board if such finding appears to be contrary to the clear preponderance of the evidence."] [Eff 9/7/1982; R] (Auth: HRS §§91-2, 171-6) (Imp: HRS §§91-14, 91-15)]~~

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilations are not underscored.

4. The amendments and compilations of chapter 13-1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, compiled pursuant to the requirements of section 91-5, Hawaii Revised Statutes, which were filed with the Office of the Lieutenant Governor.

GILBERT S. COLOMA-AGARAN, Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General